

# SENATE . . . . . No. 02034

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## The Commonwealth of Massachusetts

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SENATE, October 20, 2011

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Senate, Thursday, October 20, 2011 – New draft of Senate, No. 688  
reported from the committee on the Judiciary.

For the committee,

CYNTHIA S. CREEM.

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# SENATE . . . . . No. 02034

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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An Act to establish the Massachusetts Uniform Trust Code.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Parts 1 through 4 of Article VII of chapter 190B of the General Laws, as inserted  
2 by section 9 of chapter 521 of the Acts of 2008, are hereby repealed; Part 1 is changed to read,  
3 “Sections 7-101 to 7-105. [Reserved.]”; Part 2 is changed to read, “Sections 7-201 to 7-206.  
4 [Reserved.]”; Part 3 is changed to read, “Sections 7-301 to 7-311. [Reserved]”; Part 4 is changed  
5 to read, “Section 7-401. [Reserved.]”; and the Table of Contents is changed in the same manner.

6 SECTION 2. Paragraph (7) of subsection (a) of section 3-606 of Article III of said chapter 190B,  
7 as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by striking the  
8 words “section 7-304” and inserting in place thereof the following:- “section 702 of chapter  
9 203E”

10 SECTION 3. Section 7-502 of Article VII of said chapter 190B, as inserted by section 9 of  
11 chapter 521 of the Acts of 2008, is hereby amended by striking the words “section 7-401” and  
12 inserting in place thereof the following:- “section 816 of chapter 203E”

13 SECTION 4. Section 3C of chapter 203, as inserted by chapter 430 of the acts of 2010, is hereby  
14 repealed.

15 SECTION 5. The General Laws are hereby amended by inserting after chapter 203D the  
16 following chapter—

17 CHAPTER 203E

18 MASSACHUSETTS UNIFORM TRUST CODE

19 ARTICLE 1

20 GENERAL PROVISIONS AND DEFINITIONS

21 Section 101. [Short Title.] This chapter shall be known and may be cited as the Massachusetts  
22 Uniform Trust Code.

23 Section 102. [Scope.] This chapter applies to express trusts, charitable or non-charitable, of a  
24 donative nature and trusts created pursuant to a judgment or decree that requires the trust to be  
25 administered in the manner of said express trusts.

26 Section 103. [Definitions.] In this chapter:

27 (1) “Action,” with respect to an act of a trustee, includes a failure to act.

28 (2) “Ascertainable standard” means a standard relating to an individual’s health, education,  
29 support, or maintenance.

30 (3) “Beneficiary” means a person who has a present or future beneficial interest in a trust, vested  
31 or contingent.

32 (4) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose  
33 described in section 405(a).

34 (5) “Environmental law” means a federal, state, or local law, rule, regulation, or ordinance  
35 relating to protection of the environment.

36 (6) “Interests of the beneficiaries” means the beneficial interests provided in the terms of the  
37 trust.

38 (7) “Jurisdiction,” with respect to a geographic area, includes a state or country.

39 (8) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited  
40 liability company, association, joint venture, government; governmental subdivision, agency, or  
41 instrumentality; public corporation, or any other legal or commercial entity.

42 (9) “Property” means anything that may be the subject of ownership, whether real or personal,  
43 legal or equitable, or any interest therein.

44 (10) “Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s  
45 qualification is determined:

46 (A) is a distributee or permissible distributee of trust income or principal; or

47 (B) would be a distributee or permissible distributee of trust income or principal if the trust  
48 terminated on that date.

49 (11) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the  
50 trustee or a person holding an adverse interest.

51 (12) “Settlor” means a person, including a testator, who creates, or contributes property to, a  
52 trust. If more than one person creates or contributes property to a trust, each person is a settlor  
53 of the portion of the trust property attributable to that person’s contribution except to the extent  
54 another person has the power to revoke or withdraw that portion.

55 (13) “Spendthrift provision” means a term of a trust which restrains transfer of a beneficiary’s  
56 interest.

57 (14) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
58 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of  
59 the United States. The term includes an Indian tribe or band recognized by federal law or  
60 formally acknowledged by a state.

61 (15) “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s  
62 provisions as expressed in the trust instrument or as may be established by other evidence that  
63 would be admissible in a judicial proceeding.

64 (16) “Trust instrument” means an instrument that contains terms of the trust, including any  
65 amendments thereto.

66 (17) “Trustee” includes an original, additional, and successor trustee, and a co-trustee.

67 Section 104. [Knowledge.]

68 (a) Subject to subsection (b), a person has knowledge of a fact if the person:

69 (1) has actual knowledge of it;

70 (2) has received a notice or notification of it; or

71 (3) from all the facts and circumstances known to the person at the time in question, has reason  
72 to know it.

73 (b) An organization that conducts activities through employees has notice or knowledge of a fact  
74 involving a trust only from the time the information was received by an employee having  
75 responsibility to act for the trust, or would have been brought to the employee's attention if the  
76 organization had exercised reasonable diligence. An organization exercises reasonable diligence  
77 if it maintains reasonable routines for communicating significant information to the employee  
78 having responsibility to act for the trust and there is reasonable compliance with the routines.  
79 Reasonable diligence does not require an employee of the organization to communicate  
80 information unless the communication is part of the individual's regular duties or the individual  
81 knows a matter involving the trust would be materially affected by the information.

82 Section 105. [Default And Mandatory Rules.]

83 (a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and  
84 powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

85 (b) The terms of a trust prevail over any provision of this chapter except:

86 (1) the requirements for creating a trust;

87 (2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the  
88 trust and the interests of the beneficiaries;

89 (3) the requirement that a trust have a purpose that is lawful and not contrary to public policy;

90 (4) the power of the court to modify or terminate a trust under sections 410 through 416;

91 (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach  
92 a trust as provided in article 5;

93 (6) the power of the court under section 702 to require, dispense with, or modify or terminate a  
94 bond;

95 (7) the power of the court under section 708(b) to adjust a trustee's compensation specified in  
96 the terms of the trust which is unreasonably low or high;

97 (8) the effect of an exculpatory term under section 1008;

98 (9) the rights under sections 1010 through 1013 of a person other than a trustee or beneficiary;  
99 and

100 (10) the power of the court to take such action and exercise such jurisdiction as may be  
101 necessary in the interests of justice.

102 Section 106. [Common Law of Trusts; Principles of Equity.] The common law of trusts and  
103 principles of equity supplement this chapter, except to the extent modified by this chapter or  
104 another statute of the commonwealth.

105 Section 107. [Reserved.]

106 Section 108. [Principal Place of Administration.]

107 (a) Without precluding other means for establishing a sufficient connection with the designated  
108 jurisdiction, terms of a trust designating the principal place of administration are valid and  
109 controlling if:

110 (1) a trustee's principal place of business is located in or a trustee is a resident of the designated  
111 jurisdiction; or

112 (2) all or part of the administration occurs in the designated jurisdiction.

113 (b) Without precluding the right of the court to order, approve, or disapprove a transfer, the  
114 trustee, may, but has no affirmative duty to, transfer the trust's principal place of administration  
115 to another state or to a jurisdiction outside of the United States.

116 (c) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal  
117 place of administration not less than 60 days before initiating the transfer. The notice of  
118 proposed transfer must include:

119 (1) the name of the jurisdiction to which the principal place of administration is to be  
120 transferred;

121 (2) the address and telephone number at the new location at which the trustee can be contacted;

122 (3) an explanation of the reasons for the proposed transfer;

123 (4) the date on which the proposed transfer is anticipated to occur; and

124 (5) the date, not less than 60 days after the giving of the notice, by which the qualified  
125 beneficiary must notify the trustee of an objection to the proposed transfer.

126 (d) The authority of a trustee under this section to transfer a trust's principal place of  
127 administration terminates if a qualified beneficiary notifies the trustee of an objection to the  
128 proposed transfer on or before the date specified in the notice.

129 Section 109. [Methods and Waiver of Notice.]



130 (a) Notice to a person under this chapter or the sending of a document to a person under this  
131 chapter must be accomplished in a manner reasonably suitable under the circumstances and  
132 likely to result in receipt of the notice or document. Permissible methods of notice or for sending  
133 a document include first-class mail, personal delivery, or delivery to the person's last known  
134 place of residence or place of business.

135 (b) Notice required under this chapter or a document required to be sent under this chapter need  
136 not be provided to a person whose identity or location is unknown to and not reasonably  
137 ascertainable by the trustee.

138 (c) Notice under this chapter or the sending of a document under this chapter may be waived by  
139 the person to be notified or sent the document.

140 (d) Notice of a judicial proceeding authorized by this chapter to be brought by petition in the  
141 probate and family court department of the trial court must be given as provided in section 1-401  
142 of chapter 190B. Notice of any other judicial proceeding must be given as provided in the  
143 applicable procedural rules.

144 Section 110. [Others Treated as Qualified Beneficiaries.]

145 (a) Whenever notice to qualified beneficiaries of a trust is required under this chapter, the trustee  
146 must also give notice to any other beneficiary who has sent the trustee a request for notice.

147 (b) A charitable organization expressly designated to receive distributions under the terms of a  
148 charitable trust has the rights of a qualified beneficiary under this chapter if the charitable  
149 organization, on the date the charitable organization's qualification is being determined:

150 (1) is a distributee or permissible distributee of trust income or principal; or

151 (2) would be a distributee or permissible distributee of trust income or principal if the trust  
152 terminated on that date.

153 (c) A person appointed to enforce a trust created for the care of an animal or another non-  
154 charitable purpose as provided in section 408 or 409 has the rights of a qualified beneficiary  
155 under this chapter.

156 Section 111. [Non-judicial Settlement Agreements.]

157 (a) For purposes of this section, “interested persons” means persons whose consent would be  
158 required in order to achieve a binding settlement were the settlement to be approved by the court.

159 (b) Except as otherwise provided in subsection (c), interested persons may enter into a binding  
160 non-judicial settlement agreement with respect to any matter involving a trust.

161 (c) A non-judicial settlement agreement is valid only to the extent it does not violate a material  
162 purpose of the trust and includes terms and conditions that could be properly approved by the  
163 court under this chapter or other applicable law.

164 (d) Matters that may be resolved by a non-judicial settlement agreement include:

165 (1) the interpretation or construction of the terms of the trust;

166 (2) the approval of a trustee’s report or accounting;

167 (3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of  
168 any necessary or desirable power;

169 (4) the resignation or appointment of a trustee and the determination of a trustee’s  
170 compensation;

171 (5) transfer of a trust's principal place of administration; and

172 (6) liability of a trustee for an action relating to the trust.

173 (e) Any interested person may request the court to approve a non-judicial settlement agreement,  
174 to determine whether the representation as provided in article 3 was adequate, and to determine  
175 whether the agreement contains terms and conditions the court could have properly approved.

176 Section 112. [Rules of Construction.]

177 The rules of construction that apply in the commonwealth to the interpretation of and disposition  
178 of property by will also apply as appropriate to the interpretation of the terms of a revocable trust  
179 and the disposition of the trust property. A "revocable trust", for purposes of this section, means  
180 a trust that was (1) revocable by the settlor until the time of his or her death, (2) created or  
181 amended by the settlor after the effective date of this act, and (3) was intended to dispose of the  
182 settlor's property at death (whether under will or otherwise and whether the trust was funded at  
183 the time of the settlor's death or not).

184 Section 113. [Qualification of Foreign Trustee.]

185 A foreign corporate trustee is required to qualify as a foreign corporation doing business in the  
186 commonwealth if it maintains the principal place of administration of any trust within the  
187 commonwealth. A foreign co-trustee is not required to qualify in the commonwealth solely  
188 because its co-trustee maintains the principal place of administration in the commonwealth.  
189 Unless otherwise doing business in the commonwealth, local qualification by a foreign trustee,  
190 corporate or individual, is not required in order for the trustee to receive distribution from a local  
191 estate, to hold, invest in, manage or acquire property located in the commonwealth, or to

192 maintain litigation. Nothing in this section affects a determination of what other acts require  
193 qualification as doing business in the commonwealth.

## 194 ARTICLE 2

### 195 JUDICIAL PROCEEDINGS

#### 196 Section 201. [Role of Court in Administration of Trust.]

197 (a) The court may intervene in the administration of a trust to the extent its jurisdiction is  
198 invoked by an interested person or as provided by law.

199 (b) A trust is not subject to continuing judicial supervision unless ordered by the court.

200 (c) A judicial proceeding involving a trust may relate to any matter involving the trust's  
201 administration, including a request for instructions and an action to declare rights.

202 (d) A proceeding brought pursuant to this chapter in the probate and family court department of  
203 the trial court to appoint or remove a trustee, to approve the resignation of a trustee, to review  
204 and settle accounts of a trustee, or concerning any other matter relating to the administration of a  
205 trust may be initiated by filing a petition and giving notice as provided in section 109 to  
206 interested parties. A decree will be valid as to all who are given notice of the proceeding even if  
207 fewer than all interested parties are notified.

#### 208 Section 202. [Jurisdiction Over Trustee and Beneficiary.]

209 (a) By accepting the trusteeship of a trust having its principal place of administration in the  
210 commonwealth or by moving the principal place of administration to the commonwealth, the

211 trustee submits personally to the jurisdiction of the courts of the commonwealth regarding any  
212 matter involving the trust.

213 (b) With respect to their interests in the trust, the beneficiaries of a trust having its principal  
214 place of administration in the commonwealth are subject to the jurisdiction of the courts of the  
215 commonwealth regarding any matter involving the trust. By accepting a distribution from such a  
216 trust, the recipient submits personally to the jurisdiction of the courts of the commonwealth  
217 regarding any matter involving the trust.

218 (c) This section does not preclude other methods of obtaining jurisdiction over a trustee,  
219 beneficiary, or other person receiving property from the trust.

220 Section 203. [Trust Proceedings; Dismissal of Matters Relating to Foreign Trusts.]

221 The court will not, over the objection of a party, entertain proceedings under section 201  
222 involving a trust registered or having its principal place of administration in another state, unless  
223 (1) when all appropriate parties could not be bound by litigation in the courts of the state where  
224 the trust is registered or has its principal place of administration or (2) when the interests of  
225 justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a  
226 proceeding under this section on the consent of any party to jurisdiction of the state in which the  
227 trust is registered or has its principal place of administration, or the court may grant a  
228 continuance or enter any other appropriate order.

229 Section 204. [Venue.]

230 A trust shall be subject to the jurisdiction of the probate and family court department of the trial  
231 court of the commonwealth for the county in which is located its principal place of

232 administration. The principal place of administration of a testamentary trust shall be deemed to  
233 be the location of the court of the commonwealth in which the will creating the trust was granted  
234 informal or formal probate. Unless otherwise designated in the trust instrument, the principal  
235 place of administration of an inter vivos trust is the trustee's usual place of business where the  
236 records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such  
237 place of business. In the case of co-trustees, the principal place of administration, if not  
238 otherwise designated in the trust instrument, is (1) the usual place of business of the corporate  
239 trustee if there is but one corporate co-trustee, or (2) the usual place of business or residence of  
240 the individual trustee who is a professional fiduciary if there is but one such person and no  
241 corporate co-trustee, and otherwise (3) the usual place of business or residence of any of the co-  
242 trustees as agreed upon by them.

243 Section 205. [Petition for Transfers of Trust Property Whose Disposition Depends upon the  
244 Death of an Absentee.]

245 (a) If a trustee holds trust property the disposition of which depends upon the death of an  
246 absentee whose death has not otherwise been determined, on or after the day five years after the  
247 date of the absentee's disappearance the trustee, or any person who would be interested in the  
248 trust property were the absentee dead, may petition the court having jurisdiction of the trust for  
249 an order that the trust property be disposed of to the persons to whom and in the shares or  
250 proportions in which it would be distributed under the provisions of the trust if the absentee had  
251 died on that day.

252 (b) The court may direct the petitioner to report the results of, or make and report back  
253 concerning, a reasonably diligent search for the absentee in any manner that may seem advisable,  
254 including any or all of the following methods:

255 (1) by inserting in one or more suitable periodicals a notice requesting information from any  
256 person having knowledge of the whereabouts of the absentee;

257 (2) by notifying law enforcement officials, public welfare agencies and registers of deaths in  
258 appropriate locations of the disappearance of the absentee;

259 (3) by engaging the services of an investigator.

260 The costs of any search so directed shall be paid from the trust property.

261 (c) After any such report directed by the court under paragraph (b) above has been completed to  
262 the satisfaction of the court, notice of the hearing on the petition shall be given.

263 (d) If after the hearing the court finds that the facts warrant a presumption of death, it shall enter  
264 an appropriate order of disposition of the trust property and any undistributed net income.

## 265 ARTICLE 3

## 266 REPRESENTATION

267 Section 301. [Representation: Basic Effect.]

268 (a) Notice to a person who may represent and bind another person under this article has the same  
269 effect as if notice were given directly to the other person.

270 (b) The consent of a person who may represent and bind another person under this article is  
271 binding on the person represented unless the person represented objects to the representation  
272 before the consent would otherwise have become effective.

273 (c) Except as otherwise provided in section 602, a person who under this article may represent a  
274 settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

275 (d) A settlor may not represent and bind a beneficiary under this article with respect to the  
276 termination or modification of a trust under section 411(a).

277 Section 302. [Representation by Holder of General Testamentary Power of Appointment.] To  
278 the extent there is no conflict of interest between the holder of a general testamentary power of  
279 appointment and the persons represented with respect to the particular question or dispute, the  
280 holder may represent and bind persons whose interests, as permissible appointees, takers in  
281 default, or otherwise, are subject to the power.

282 Section 303. [Representation by Fiduciaries and Parents.] To the extent there is no conflict of  
283 interest between the representative and the person represented or among those being represented  
284 with respect to a particular question or dispute:

285 (1) a conservator may represent and bind the estate that the conservator controls;

286 (2) a guardian may represent and bind the ward or protected person if a conservator has not been  
287 appointed;

288 (3) an agent having authority to act with respect to the particular question or dispute may  
289 represent and bind the principal;

290 (4) a trustee may represent and bind the beneficiaries of the trust;



291 (5) a personal representative of a decedent's estate may represent and bind persons interested in  
292 the estate; and

293 (6) a parent may represent and bind the parent's minor or unborn child if a conservator or  
294 guardian for the child has not been appointed.

295 Section 304. [Representation by Person Having Substantially Identical Interest.] Unless  
296 otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or  
297 location is unknown and not reasonably ascertainable, may be represented by and bound by  
298 another having a substantially identical interest with respect to the particular question or dispute,  
299 but only to the extent there is no conflict of interest between the representative and the person  
300 represented.

301 Section 305. [Appointment of Guardian ad Litem.]

302 (a) If the court determines that an interest is not represented under this article, or that the  
303 otherwise available representation might be inadequate, the court may appoint a guardian ad  
304 litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor,  
305 incapacitated, or unborn individual, or a person whose identity or location is unknown. A  
306 guardian ad litem may be appointed to represent several persons or interests.

307 (b) A guardian ad litem may act on behalf of the individual represented with respect to any  
308 matter arising under this chapter, whether or not a judicial proceeding concerning the trust is  
309 pending.

310 (c) In making decisions, a guardian ad litem may consider general benefit accruing to the living  
311 members of the individual's family.

312 ARTICLE 4

313 CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

314 Section 401. [Methods Of Creating Trust.] A trust may be created by:

315 (1) transfer of property to another person as trustee during the settlor's lifetime or by will or

316 other disposition taking effect upon the settlor's death;

317 (2) declaration by the owner of property that the owner holds identifiable property as trustee; or

318 (3) exercise of a power of appointment in favor of a trustee.

319 Section 402. [Requirements For Creation.]

320 (a) A trust is created only if:

321 (1) the settlor has capacity to create a trust;

322 (2) the settlor indicates an intention to create the trust;

323 (3) the trust has a definite beneficiary or is:

324 (A) a charitable trust;

325 (B) a trust for the care of an animal, as provided in section 408; or

326 (C) a trust for a non-charitable purpose, as provided in section 409;

327 (4) the trustee has duties to perform; and

328 (5) the same person is not the sole trustee and sole beneficiary.

329 (b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to  
330 any applicable rule against perpetuities.

331 (c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is  
332 not exercised within a reasonable time, the power fails and the property subject to the power  
333 passes to the persons who would have taken the property had the power not been conferred.

334 Section 403. [Trusts Created in Other Jurisdictions.] A trust not created by will is validly  
335 created if its creation complies with the law of the jurisdiction in which the trust instrument was  
336 executed, or the law of the jurisdiction in which, at the time of creation:

337 (1) the settlor was domiciled, had a place of abode, or was a national;

338 (2) a trustee was domiciled or had a place of business; or

339 (3) any trust property was located.

340 Section 404. [Trust Purposes.] A trust may be created only to the extent its purposes are lawful  
341 and not contrary to public policy.

342 Section 405. [Charitable Purposes; Enforcement.]

343 (a) A charitable trust may be created for the relief of poverty, the advancement of education or  
344 religion, the promotion of health, governmental or municipal purposes, or other purposes the  
345 achievement of which is beneficial to the community.

346 (b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary  
347 and do not provide a method to select such a purpose or beneficiary, the court may select one or

348 more charitable purposes or beneficiaries. The selection must be consistent with the settlor's  
349 intention to the extent it can be ascertained.

350 (c) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the  
351 trust.

352 Section 406. [Creation of Trust Induced By Fraud, Duress, or Undue Influence.] A trust is void  
353 to the extent its creation was induced by fraud, duress, or undue influence.

354 Section 407. [Evidence of Oral Trust.] Except as required by a statute other than this chapter, a  
355 trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms  
356 may be established only by clear and convincing evidence.

357 Section 408. [Trust for Care of Animal.]

358 (a) A trust for the care of animals alive during the settlor's lifetime shall be valid. Unless the  
359 trust instrument provides for an earlier termination, the trust shall terminate upon the death of the  
360 animal or, if the trust was created to provide for the care of more than 1 animal alive during the  
361 settlor's lifetime, upon the death of last surviving animal.

362 (b) Except as otherwise expressly provided in the trust instrument, no portion of the principal or  
363 income shall be converted to the use of the trustee, other than reasonable trustee fees and  
364 expenses of administration, or to any use other than for the benefit of covered animals.

365 (c) A court may reduce the amount of property held by the trust if it determines that the amount  
366 substantially exceeds the amount required for the intended use and the court finds that there will  
367 be no substantial adverse impact in the care, maintenance, health or appearance of the covered

368 animal. The amount of the reduction shall pass as unexpended trust property in accordance with  
369 subsection (d).

370 (d) Upon reduction or termination, the trustee shall transfer the unexpended trust property in the  
371 following order:

372 (1) as directed in the trust instrument;

373 (2) to the settlor, if living;

374 (3) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the  
375 transferor's will, under the residuary clause in the transferor's will; or

376 (4) to the settlor's heirs in accordance with chapter 190B.

377 (e) If a trustee is not designated by the trust instrument or no designated trustee is willing or able  
378 to serve, the court shall name a trustee. The court may order the transfer of the property to  
379 another trustee if the transfer is necessary to ensure that the intended use is carried out. The court  
380 may also make other orders and determinations as are advisable to carry out the intent of the  
381 settler and the intended use of the trust.

382 (f) The intended use of the principal or income may be enforced by an individual designated for  
383 that purpose in the trust instrument, by the person having custody of an animal for which care is  
384 provided by the trust instrument, by a remainder beneficiary or by an individual appointed by a  
385 court upon application to it by an individual or charitable organization.

386 (g) The settlor or other custodian of an animal for whose benefit the trust was created may  
387 transfer custody of the animal to the trustee at or subsequent to the creation of the trust.

388 (h) Any trust created under this section shall be subject to sections 2-901 to 2-906 of chapter  
389 190B, and the common law Rule Against Perpetuities; provided, however, that the life or lives in  
390 being shall be measured based on the animal or animals alive at the time of the settlor's death or  
391 when the trust becomes irrevocable. The measuring lives shall be those of the beneficiary  
392 animals, not human lives. This paragraph shall not apply to a trust created under an instrument  
393 executed before the effective date of this chapter.

394 Section 409. [Non-charitable Trust Without Ascertainable Beneficiary.] Except as otherwise  
395 provided in section 408 or by another statute, the following rules apply:

396 (1) A trust may be created for a non-charitable purpose without a definite or definitely  
397 ascertainable beneficiary or for a non-charitable but otherwise valid purpose to be selected by the  
398 trustee.

399 (2) A trust authorized by this section may be enforced by a person appointed in the terms of the  
400 trust or, if no person is so appointed, by a person appointed by the court.

401 (3) Property of a trust authorized by this section may be applied only to its intended use, except  
402 to the extent the court determines that the value of the trust property exceeds the amount required  
403 for the intended use. Except as otherwise provided in the terms of the trust, property not  
404 required for the intended use must be distributed to the settlor, if then living, otherwise to the  
405 settlor's successors in interest.

406 Section 410. [Modification or Termination of Trust; Proceedings for Approval or Disapproval.]

407 (a) In addition to the methods of termination prescribed by sections 411 through 414, a trust  
408 terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the

409 trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to  
410 public policy, or impossible to achieve.

411 (b) A proceeding to approve or disapprove a proposed modification or termination under  
412 sections 411 through 416, or trust combination or division under section 417, may be  
413 commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed  
414 modification or termination under section 411 may be commenced by the settlor.

415 Section 411. [Modification or Termination of Non-charitable Irrevocable Trust by Consent.]

416 (a) If, upon petition, the court finds that the settlor and all beneficiaries consent to the  
417 modification or termination of a non-charitable irrevocable trust, the court may approve the  
418 modification or termination even if the modification or termination is inconsistent with a  
419 material purpose of the trust.

420 (b) A non-charitable irrevocable trust may be terminated upon consent of all of the beneficiaries  
421 if the court concludes that continuance of the trust is not necessary to achieve any material  
422 purpose of the trust. A non-charitable irrevocable trust may be modified upon consent of all of  
423 the beneficiaries if the court concludes that modification is not inconsistent with a material  
424 purpose of the trust.

425 (c) If not all of the beneficiaries consent to a proposed modification or termination of the trust  
426 under subsection (a) or (b), the modification or termination may be approved by the court if the  
427 court is satisfied that:

428 (1) if all of the beneficiaries had consented, the trust could have been modified or terminated  
429 under this section; and

430 (2) the interests of a beneficiary who does not consent will be adequately protected.

431 Section 412. [Modification or Termination Because of Unanticipated Circumstances or Inability  
432 to Administer Trust Effectively.]

433 (a) The court may modify the administrative or dispositive terms of a trust or terminate the trust  
434 if, because of circumstances not anticipated by the settlor, modification or termination will  
435 further the purposes of the trust. To the extent practicable, the modification must be made in  
436 accordance with the settlor's probable intention.

437 (b) The court may modify the administrative terms of a trust if continuation of the trust on its  
438 existing terms would be impracticable or wasteful or impair the trust's administration.

439 Section 413. [Reserved.]

440 Section 414. [Modification or Termination of Uneconomic Trust.]

441 (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property  
442 having a total value less than \$200,000 may terminate the trust if the trustee concludes that the  
443 value of the trust property is insufficient to justify the cost of administration.

444 (b) The court may modify or terminate a trust or remove the trustee and appoint a different  
445 trustee if it determines that the value of the trust property is insufficient to justify the cost of  
446 administration.

447 (c) Upon termination of a trust under this section, the trustee shall distribute the trust property in  
448 a manner consistent with the purposes of the trust.

449 (d) This section does not apply to an easement for conservation or preservation.



450 (e) Action may be taken under this section regardless of any spendthrift or similar protective  
451 provision.

452 Section 415. [Reformation to Correct Mistakes.] The court may reform the terms of a trust,  
453 even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and  
454 convincing evidence that the settlor's intent or the terms of the trust were affected by a mistake  
455 of fact or law, whether in expression or inducement.

456 Section 416. [Reserved.]

457 Section 417. [Combination and Division of Trusts.] After notice to the qualified beneficiaries, a  
458 trustee may combine two or more trusts into a single trust or divide a trust into two or more  
459 separate trusts, if the result does not impair rights of any beneficiary or adversely affect  
460 achievement of the purposes of the trust.

## 461 ARTICLE 5

### 462 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

463 Section 501. [Rights of Beneficiary's Creditor or Assignee.] To the extent a beneficiary's  
464 interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of  
465 the beneficiary to reach the beneficiary's interest by attachment of present or future distributions  
466 to or for the benefit of the beneficiary or other means. The court may limit the award to such  
467 relief as is appropriate under the circumstances.

468 Section 502. [Spendthrift Provision.]

469 (a) A spendthrift provision in any instrument executed after the effective date of this chapter is  
470 valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

471 (b) A term of a trust providing that the interest of a beneficiary is held subject to a “spendthrift  
472 trust,” or words of similar import, is sufficient to restrain both voluntary and involuntary transfer  
473 of the beneficiary’s interest.

474 (c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift  
475 provision and, except as otherwise provided in this article, a creditor or assignee of the  
476 beneficiary may not reach the interest or a distribution by the trustee before its receipt by the  
477 beneficiary.

478 Section 503. [Reserved.]

479 Section 504. [Reserved.]

480 Section 505. [Creditor’s Claim Against Settlor.]

481 (a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

482 (1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the  
483 settlor’s creditors.

484 (2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the  
485 maximum amount that can be distributed to or for the settlor’s benefit and, if a trust has more  
486 than one settlor, the amount the creditor or assignee of a particular settlor may reach may not  
487 exceed the settlor’s interest in the portion of the trust attributable to that settlor’s contribution.  
488 Trust property shall not be considered distributable to or for the settlor’s benefit solely because  
489 the trustee is authorized by the terms of the trust to reimburse the settlor for any tax on trust  
490 income or capital gain that is payable by the settlor under the law imposing such tax; no creditor

491 or assignee of the settlor of an irrevocable trust shall be entitled to reach any trust property based  
492 on the discretionary authority described in this sentence.

493 (3) After the death of a settlor, and subject to the settlor's right to direct the source from which  
494 liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to  
495 claims of the settlor's creditors, the expenses of the settlor's funeral and disposal of remains, and  
496 statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is  
497 inadequate to satisfy those claims, expenses, and allowances.

498 Section 506. [Overdue Distribution.]

499 (a) In this section, "mandatory distribution" means a distribution of income or principal which  
500 the trustee is required to make to a beneficiary under the terms of the trust, including a  
501 distribution upon termination of the trust. The term does not include a distribution subject to the  
502 exercise of the trustee's discretion even if (1) the discretion is expressed in the form of a standard  
503 of distribution, or (2) the terms of the trust authorizing a distribution couple language of  
504 discretion with language of direction.

505 (b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary  
506 may reach a mandatory distribution of income or principal, including a distribution upon  
507 termination of the trust, if the trustee has not made the distribution to the beneficiary within a  
508 reasonable time after the designated distribution date.

509 Section 507. [Personal Obligations of Trustee.] Trust property is not subject to personal  
510 obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

511 ARTICLE 6

512 REVOCABLE TRUSTS

513 Section 601. [Reserved.]

514 Section 602. [Revocation or Amendment of Revocable Trust.]

515 (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may  
516 revoke or amend the trust. This subsection does not apply to a trust created under an instrument  
517 executed before the effective date of this chapter.

518 (b) If a revocable trust is created or funded by more than one settlor:

519 (1) to the extent the trust consists of community property, the trust may be revoked by either  
520 spouse acting alone but may be amended only by joint action of both spouses;

521 (2) to the extent the trust consists of property other than community property, each settlor may  
522 revoke or amend the trust with regard the portion of the trust property attributable to that settlor's  
523 contribution; and

524 (3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee  
525 shall promptly notify the other settlors of the revocation or amendment.

526 (c) The settlor may revoke or amend a revocable trust:

527 (1) by complying with a method provided in the terms of the trust; or

528 (2) if the terms of the trust do not provide a method, by any method manifesting clear and  
529 convincing evidence of the settlor's intent.

530 (d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor  
531 directs.

532 (e) A settlor's powers with respect to revocation, amendment, or distribution of trust property  
533 may be exercised by an agent under a power of attorney only to the extent expressly authorized  
534 by the terms of the trust and the power.

535 (f) A trustee who does not know that a trust has been revoked or amended is not liable to the  
536 settlor or settlor's successors in interest for distributions made and other actions taken on the  
537 assumption that the trust had not been amended or revoked.

538 Section 603. [Settlor's Powers; Powers of Withdrawal.]

539 (a) While a trust is revocable and the settlor has capacity to revoke the trust, rights of the  
540 beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to,  
541 the settlor.

542 (b) During the period the power may be exercised, the holder of a non-lapsing power of  
543 withdrawal shall be treated for purposes of this section as if he or she were the settlor of a  
544 revocable trust to the extent of the property subject to the power.

545 Section 604. [Limitation on Action Contesting Validity of Revocable Trust; Distribution of  
546 Trust Property.]

547 (a) A person may commence a judicial proceeding to contest the validity of a trust that was  
548 revocable at the settlor's death within the earlier of:

549 (1) one year after the settlor's death; or

550 (2) 60 days after the trustee sent the person a copy of the trust instrument and a notice informing  
551 the person of the trust's existence, of the trustee's name and address, and of the time allowed for  
552 commencing a proceeding.

553 (b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee  
554 may proceed to distribute the trust property in accordance with the terms of the trust. The trustee  
555 is not subject to liability for doing so unless:

556 (1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

557 (2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the  
558 trust and a judicial proceeding is commenced within 60 days after the contestant sent the  
559 notification.

560 (c) A beneficiary of a trust that is determined to have been invalid is liable to return any  
561 distribution received.

## 562 ARTICLE 7

### 563 OFFICE OF TRUSTEE

#### 564 Section 701. [Accepting or Declining Trusteeship.]

565 (a) Except as otherwise provided in subsection (c), a person designated as trustee accepts the  
566 trusteeship:

567 (1) by substantially complying with a method of acceptance provided in the terms of the trust; or

568 (2) if the terms of the trust do not provide a method or the method provided in the terms is not  
569 expressly made exclusive, by accepting delivery of the trust property, exercising powers or  
570 performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

571 (b) A person designated as trustee who has not yet accepted the trusteeship may reject the  
572 trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time  
573 after knowing of the designation is deemed to have rejected the trusteeship.

574 (c) A person designated as trustee, without accepting the trusteeship, may, but need not:

575 (1) act to preserve the trust property if, within a reasonable time after acting, the person sends a  
576 rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified  
577 beneficiary; and

578 (2) inspect or investigate trust property to determine potential liability under environmental or  
579 other law or for any other purpose.

580 Section 702. [Duty to Provide Bond.]

581 In the case of a testamentary trust, a trustee shall furnish a bond for the performance of the  
582 trustee's fiduciary duties and a surety shall be required unless waived by the terms of the trust, or  
583 found by the probate and family court department of the trial court to be not necessary to protect  
584 the interests of the beneficiaries. On petition of the trustee or other interested person the probate  
585 court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or  
586 permit the substitution of another bond with the same or different sureties. When the instrument  
587 creating the trust exempts the trustee from furnishing a bond or limits the amount thereof, or the  
588 probate court determines that the bond is insufficient, the probate court may if it concludes that a

589 bond is necessary or that a bond of a larger amount is necessary, require the furnishing of such  
590 bond. The terms and conditions of the bond shall be as set forth in section 3-606 of chapter  
591 190B.

592 Section 703. [Co-Trustees.]

593 (a) Co-trustees who are unable to reach a unanimous decision may act by majority decision.

594 (b) If a vacancy occurs in a co-trusteeship, the remaining co-trustees may act for the trust.

595 (c) A co-trustee must participate in the performance of a trustee's function unless the co-trustee  
596 is unavailable to perform the function because of absence, illness, disqualification under other  
597 law, or other temporary incapacity or the co-trustee has properly delegated the performance of  
598 the function to another trustee.

599 (d) If a co-trustee is unavailable to perform duties because of absence, illness, disqualification  
600 under other law, or other temporary incapacity, and prompt action is necessary to achieve the  
601 purposes of the trust or to avoid injury to the trust property, the remaining co-trustee or a  
602 majority of the remaining co-trustees may act for the trust.

603 (e) Except as otherwise provided in subsection (f), a trustee who does not join in an action of  
604 another trustee is not liable for the action.

605 (f) Each trustee shall exercise reasonable care to:

606 (1) prevent a co-trustee from committing a breach of trust; and

607 (2) compel a co-trustee to redress a breach of trust.



608 (g) The provisions of this section permitting trustees to act in certain circumstances by majority  
609 rather than unanimity shall not apply with respect to trusts established under instruments  
610 executed before the effective date of this act.

611 Section 704. [Vacancy in Trusteeship; Appointment of Successor.]

612 (a) A vacancy in a trusteeship occurs if:

613 (1) a person designated as trustee rejects the trusteeship;

614 (2) a person designated as trustee cannot be identified or does not exist;

615 (3) a trustee resigns;

616 (4) a trustee is disqualified or removed;

617 (5) a trustee dies; or

618 (6) a guardian or conservator is appointed for an individual serving as trustee.

619 (b) If one or more co-trustees remain in office, a vacancy in a trusteeship need not be filled. A

620 vacancy in a trusteeship must be filled if the trust has no remaining trustees.

621 (c) A vacancy in a trusteeship that is required to be filled must be filled in the following order of

622 priority:

623 (1) by a person designated by the terms of the trust to act as successor trustee;

624 (2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

625 (3) by a person appointed by the court.

626 (d) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may  
627 appoint an additional trustee or special fiduciary whenever the court considers the appointment  
628 necessary for the administration of the trust.

629 Section 705. [Resignation of Trustee.]

630 (a) A trustee may resign:

631 (1) upon at least 30 days' notice to: (i) in the case of a revocable trust, the settlor and all co-  
632 trustees of the trust, and (ii) in the case of any other trust, the qualified beneficiaries and all co-  
633 trustees of the trust; or

634 (2) with the approval of the court.

635 (b) In approving a resignation, the court may issue orders and impose conditions reasonably  
636 necessary for the protection of the trust property.

637 (c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or  
638 omissions of the trustee is not discharged or affected by the trustee's resignation.

639 Section 706. [Removal of Trustee.]

640 (a) The settlor, a co-trustee, or a beneficiary may request the court to remove a trustee, or a  
641 trustee may be removed by the court on its own initiative.

642 (b) The court may remove a trustee if:

643 (1) the trustee has committed a serious breach of trust;

644 (2) lack of cooperation among co-trustees substantially impairs the administration of the trust;

645 (3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust  
646 effectively, the court determines that removal of the trustee best serves the interests of the  
647 beneficiaries; or

648 (4) there has been a substantial change of circumstances or removal is requested by all of the  
649 qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all  
650 of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable co-  
651 trustee or successor trustee is available.

652 (c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to  
653 removing a trustee, the court may order such appropriate relief under section 1001(b) as may be  
654 necessary to protect the trust property or the interests of the beneficiaries.

655 Section 707. [Delivery of Property by Former Trustee.]

656 A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust  
657 property within the trustee's possession to the co-trustee, successor trustee, or other person  
658 entitled to it.

659 Section 708. [Compensation of Trustee.]

660 (a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to  
661 compensation that is reasonable under the circumstances.

662 (b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be  
663 compensated as specified, but the court may allow more or less compensation if:

664 (1) the duties of the trustee are substantially different from those contemplated when the trust  
665 was created; or

666 (2) the compensation specified by the terms of the trust would be unreasonably low or high.

667 Section 709. [Reimbursement of Expenses.]

668 (a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate,

669 for:

670 (1) expenses that were properly incurred in the administration of the trust; and

671 (2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not

672 properly incurred in the administration of the trust.

673 (b) An advance by the trustee of money for the protection of the trust gives rise to a lien against

674 trust property to secure reimbursement with reasonable interest.

675 ARTICLE 8

676 DUTIES AND POWERS OF TRUSTEE

677 Section 801. [Duty to Administer Trust.] Upon acceptance of a trusteeship, the trustee shall

678 administer the trust in good faith, in accordance with its terms and purposes and the interests of

679 the beneficiaries, and in accordance with this chapter.

680 Section 802. [Duty of Loyalty.]

681 (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

682 (b) Subject to the rights of persons dealing with or assisting the trustee as provided in section

683 1012, a sale, encumbrance, or other transaction involving the investment or management of trust

684 property entered into by the trustee for the trustee's own personal account or which is otherwise

685 affected by a conflict between the trustee's fiduciary and personal interests is voidable by a  
686 beneficiary affected by the transaction unless:

687 (1) the transaction was authorized by the terms of the trust;

688 (2) the transaction was approved by the court;

689 (3) the beneficiary did not commence a judicial proceeding within the time allowed by section  
690 1005;

691 (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the  
692 trustee in compliance with section 1009; or

693 (5) the transaction involves a contract entered into or claim acquired by the trustee before the  
694 person became a trustee.

695 (c) A sale, encumbrance, or other transaction involving the investment or management of trust  
696 property is presumed to be affected by a conflict between personal and fiduciary interests if it is  
697 entered into by the trustee with:

698 (1) the trustee's spouse; or

699 (2) the trustee's descendants, siblings, parents, or their spouses.

700 (d) A transaction not concerning trust property in which the trustee engages in the trustee's  
701 individual capacity involves a conflict between personal and fiduciary interests if the transaction  
702 concerns an opportunity properly belonging to the trust.

703 (e) An investment by a trustee in securities of an investment company or investment trust to  
704 which the trustee, or its affiliate, provides services in a capacity other than as trustee is not

705 presumed to be affected by a conflict between personal and fiduciary interests if the investment  
706 otherwise complies with the prudent investor rule of chapter 203C. In addition to its  
707 compensation for acting as trustee, the trustee may be compensated by the investment company  
708 or investment trust for providing those services out of fees charged to the trust. If the trustee  
709 receives compensation from the investment company or investment trust for providing  
710 investment advisory or investment management services, the trustee must at least annually notify  
711 the persons entitled under section 813 to receive a copy of the trustee's annual report of the rate  
712 and method by which that compensation was determined.

713 (f) In voting shares of stock or in exercising powers of control over similar interests in other  
714 forms of enterprise, the trustee shall act in the best interests of the beneficiaries.

715 (g) This section does not preclude the following transactions, if fair to the beneficiaries:

716 (1) an agreement between a trustee and a beneficiary relating to the appointment or  
717 compensation of the trustee;

718 (2) payment of reasonable compensation to the trustee;

719 (3) a transaction between a trust and another trust, decedent's estate, or conservatorship of  
720 which the trustee is a fiduciary or in which a beneficiary has an interest;

721 (4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

722 (5) an advance or loan by the trustee of money to the trust for a proper trust purpose.

723 Section 803. [Impartiality.] If a trust has two or more beneficiaries, the trustee shall act  
724 impartially in investing, managing, and distributing the trust property, giving due regard to the  
725 beneficiaries' respective interests.

726 Section 804. [Prudent Administration.] A trustee shall administer the trust as a prudent person  
727 would, considering the purposes, terms, and other circumstances of the trust. In satisfying this  
728 standard, the trustee shall exercise reasonable care, skill, and caution.

729 Section 805. [Costs of Administration.] In administering a trust, the trustee may incur only  
730 costs that are appropriate and reasonable in relation to the trust property, the purposes of the  
731 trust, and the skills of the trustee.

732 Section 806. [Trustee's Skills.] A trustee who has special skills or expertise, or is named trustee  
733 in reliance upon the trustee's representation that the trustee has such special skills or expertise,  
734 shall have a duty to use such special skills or expertise.

735 Section 807. [Delegation by Trustee.]

736 (a) A trustee may delegate duties and powers if it is prudent to do so. The trustee shall exercise  
737 reasonable care, skill, and caution in:

738 (1) selecting an agent;

739 (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of  
740 the trust; and

741 (3) periodically reviewing the agent's actions in order to monitor the agent's performance and  
742 compliance with the terms of the delegation.

743 (b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable  
744 care to comply with the terms of the delegation.

745 (c) A trustee who complies with subsection (a) is not liable to the beneficiaries or to the trust for  
746 an action of the agent to whom the function was delegated.

747 (d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the  
748 law of the commonwealth, an agent submits to the jurisdiction of the courts of the  
749 commonwealth.

750 Section 808. [Powers to Direct.]

751 (a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to  
752 the terms of the trust.

753 (b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to  
754 direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the  
755 power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee  
756 knows the attempted exercise would constitute a serious breach of a fiduciary duty that the  
757 person holding the power owes to the beneficiaries of the trust.

758 (c) A person who holds a power to direct is presumptively a fiduciary who, as such, is required  
759 to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries.  
760 The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

761 Section 809. [Control and Protection of Trust Property.] A trustee shall take reasonable steps to  
762 take control of and protect the trust property.

763 Section 810. [Recordkeeping and Identification of Trust Property.]

764 (a) A trustee shall keep adequate records of the administration of the trust.



765 (b) A trustee shall keep trust property separate from the trustee's own property.

766 (c) If the trustee maintains records clearly indicating the respective interests, a trustee may

767 invest as a whole the property of two or more separate trusts.

768 Section 811. [Enforcement and Defense of Claims.] A trustee shall take reasonable steps to

769 enforce claims of the trust and to defend claims against the trust.

770 Section 812. [Collecting Trust Property.] A trustee shall take reasonable steps to compel a

771 former trustee or other person to deliver trust property to the trustee, and to redress a breach of

772 trust known to the trustee to have been committed by a former trustee.

773 Section 813. [Duty to Inform and Report.]

774 (a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the

775 administration of the trust. Unless unreasonable under the circumstances, a trustee shall

776 promptly respond to a qualified beneficiary's request for information related to the

777 administration of the trust.

778 (b) Within 30 days after acceptance of the trust or the trust becomes irrevocable, whichever is

779 later, the trustee shall inform in writing the qualified beneficiaries of the trustee's name and

780 address. The information shall be delivered or sent by ordinary first class mail.

781 (c) A trustee shall send an account to the distributees and permissible distributees of trust

782 income or principal, and to other qualified beneficiaries who request it, at least annually and at

783 the termination of the trust. The account may be formal or informal, but shall include

784 information relating to the trust property, liabilities, receipts, and disbursements, including the

785 amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective  
786 market values.

787 (d) A beneficiary may waive the right to a trustee's account or other information otherwise  
788 required to be furnished under this section. A beneficiary, with respect to future accounts and  
789 other information, may withdraw a waiver previously given. A waiver of a trustee's account or  
790 other information does not relieve the trustee from accountability and potential liability for  
791 matters that the account or other information would have disclosed.

792 Section 814. [Discretionary Powers; Tax Savings.]

793 (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust,  
794 including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise  
795 a discretionary power in good faith and in accordance with the terms and purposes of the trust  
796 and the interests of the beneficiaries.

797 (b) Subject to subsection (d), and unless the terms of the trust expressly indicate that a rule in  
798 this subsection does not apply:

799 (1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the  
800 trustee a power to make discretionary distributions to or for the trustee's personal benefit may  
801 exercise the power only in accordance with an ascertainable standard; and

802 (2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal  
803 obligation of support that the trustee personally owes another person.

804 (c) A power whose exercise is limited or prohibited by subsection (b) may be exercised by a  
805 majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If

806 the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary  
807 with authority to exercise the power.

808 (d) Subsection (b) does not apply to:

809 (1) a power held by the settlor's spouse who is the trustee of a trust for which a marital  
810 deduction was previously allowed; or

811 (2) any trust during any period that the trust may be revoked or amended by its settlor.

812 Section 815. [General Powers of Trustee.]

813 (a) A trustee, without authorization by the court, may exercise:

814 (1) powers conferred by the terms of the trust; or

815 (2) except as limited by the terms of the trust:

816 (A) all powers over the trust property which an unmarried competent owner has over  
817 individually owned property;

818 (B) any other powers appropriate to achieve the proper investment, management, and  
819 distribution of the trust property; and

820 (C) any other powers conferred by this chapter.

821 (b) The exercise of a power is subject to the fiduciary duties prescribed by this article.

822 Section 816. [Specific Powers of Trustee.] Without limiting the authority conferred by section  
823 815, a trustee may:

824 (1) collect trust property and accept or reject additions to the trust property from a settlor or any  
825 other person;

826 (2) acquire or sell property, for cash or on credit, at public or private sale;

827 (3) exchange, partition, or otherwise change the character of trust property;

828 (4) deposit trust money in an account in a regulated financial-service institution;

829 (5) borrow money, with or without security, and mortgage or pledge trust property for a period  
830 within or extending beyond the duration of the trust;

831 (6) with respect to an interest in a proprietorship, partnership, limited liability company,  
832 business trust, corporation, or other form of business or enterprise, continue the business or other  
833 enterprise and take any action that may be taken by shareholders, members, or property owners,  
834 including merging, dissolving, or otherwise changing the form of business organization or  
835 contributing additional capital;

836 (7) with respect to stocks or other securities, exercise the rights of an absolute owner, including  
837 the right to:

838 (A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue  
839 a voting trust agreement;

840 (B) hold a security in the name of a nominee or in other form without disclosure of the trust so  
841 that title may pass by delivery;

842 (C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell  
843 or exercise stock subscription or conversion rights; and

844 (D) deposit the securities with a depository or other regulated financial-service institution;

845 (8) with respect to an interest in real property, construct, or make ordinary or extraordinary  
846 repairs to, alterations to, or improvements in, buildings or other structures, demolish  
847 improvements, raze existing or erect new party walls or buildings, subdivide or develop land,  
848 dedicate land to public use or grant public or private easements, and make or vacate plats and  
849 adjust boundaries;

850 (9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement  
851 for exploration and removal of natural resources, with or without the option to purchase or  
852 renew, for a period within or extending beyond the duration of the trust;

853 (10) grant an option involving a sale, lease, or other disposition of trust property or acquire an  
854 option for the acquisition of property, including an option exercisable beyond the duration of the  
855 trust, and exercise an option so acquired;

856 (11) insure the property of the trust against damage or loss and insure the trustee, the trustee's  
857 agents, and beneficiaries against liability arising from the administration of the trust;

858 (12) abandon or decline to administer property of no value or of insufficient value to justify its  
859 collection or continued administration;

860 (13) with respect to possible liability for violation of environmental law:

861 (A) inspect or investigate property the trustee holds or has been asked to hold, or property  
862 owned or operated by an organization in which the trustee holds or has been asked to hold an  
863 interest, for the purpose of determining the application of environmental law with respect to the  
864 property;

865 (B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any  
866 environmental law affecting property held directly or indirectly by the trustee, whether taken  
867 before or after the assertion of a claim or the initiation of governmental enforcement;

868 (C) decline to accept property into trust or disclaim any power with respect to property that is or  
869 may be burdened with liability for violation of environmental law;

870 (D) compromise claims against the trust which may be asserted for an alleged violation of  
871 environmental law; and

872 (E) pay the expense of any inspection, review, abatement, or remedial action to comply with  
873 environmental law;

874 (14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in  
875 part, a claim belonging to the trust;

876 (15) pay taxes, assessments, compensation of the trustee and of employees and agents of the  
877 trust, and other expenses incurred in the administration of the trust;

878 (16) exercise elections with respect to federal, state, and local taxes;

879 (17) select a mode of payment under any employee benefit or retirement plan, annuity, or life  
880 insurance payable to the trustee, exercise rights thereunder, including exercise of the right to  
881 indemnification for expenses and against liabilities, and take appropriate action to collect the  
882 proceeds;

883 (18) make loans out of trust property, including loans to a beneficiary on terms and conditions  
884 the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien  
885 on future distributions for repayment of those loans;

886 (19) pledge trust property to guarantee loans made by others to the beneficiary;

887 (20) appoint a trustee to act in another jurisdiction with respect to trust property located in the

888 other jurisdiction, confer upon the appointed trustee all of the powers and duties of the

889 appointing trustee, require that the appointed trustee furnish security, and remove any trustee so

890 appointed;

891 (21) pay an amount distributable to a beneficiary who is under a legal disability or who the

892 trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it

893 for the beneficiary's benefit, or by:

894 (A) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator,

895 the beneficiary's guardian;

896 (B) paying it to the beneficiary's custodian under chapter 201A or custodial trustee under part 5

897 of Article VII of chapter 190B, and, for that purpose, creating a custodianship or custodial trust;

898 (C) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee,

899 paying it to an adult relative or other person having legal or physical care or custody of the

900 beneficiary, to be expended on the beneficiary's behalf; or

901 (D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's

902 continuing right to withdraw the distribution;

903 (22) on distribution of trust property or the division or termination of a trust, make distributions

904 in divided or undivided interests, allocate particular assets in proportionate or disproportionate

905 shares, value the trust property for those purposes, and adjust for resulting differences in

906 valuation;

907 (23) resolve a dispute concerning the interpretation of the trust or its administration by  
908 mediation, arbitration, or other procedure for alternative dispute resolution;

909 (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect  
910 trust property and the trustee in the performance of the trustee's duties;

911 (25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the  
912 exercise of the trustee's powers;

913 (26) establish or continue title-holding entities, including so-called "nominee trusts" for the  
914 purposes of holding legal title to any portion or all of the trust property without the need to  
915 record or make public the terms of the trust; and

916 (27) on termination of the trust, exercise the powers appropriate to wind up the administration of  
917 the trust and distribute the trust property to the persons entitled to it.

918 Section 817. [Distribution upon Termination.]

919 (a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a  
920 proposal for distribution. The right of any beneficiary to object to the proposed distribution  
921 terminates if the beneficiary does not notify the trustee of an objection within 30 days after the  
922 proposal was sent but only if the proposal (i) informed the beneficiary of the right to object and  
923 of the time allowed for objection and (ii) provided the beneficiary with sufficient material facts  
924 to enable the beneficiary to evaluate the proposal.

925 (b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall  
926 proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the  
927 right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.



928 ARTICLE 9

929 [RESERVED]

930 ARTICLE 10

931 LIABILITY OF TRUSTEES AND RIGHTS OF

932 PERSONS DEALING WITH TRUSTEE

933 Section 1001. [Remedies for Breach of Trust.]

934 (a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

935 (b) To remedy a breach of trust that has occurred or may occur, the court may:

936 (1) compel the trustee to perform the trustee's duties;

937 (2) enjoin the trustee from committing a breach of trust;

938 (3) compel the trustee to redress a breach of trust by paying money, restoring property, or other

939 means;

940 (4) order a trustee to account;

941 (5) appoint a special fiduciary to take possession of the trust property and administer the trust;

942 (6) suspend the trustee;

943 (7) remove the trustee;

944 (8) reduce or deny compensation to the trustee;

945 (9) subject to section 1012, void an act of the trustee, impose a lien or a constructive trust on  
946 trust property, or trace trust property wrongfully disposed of and recover the property or its  
947 proceeds; or

948 (10) order any other appropriate relief.

949 Section 1002. [Reserved.]

950 Section 1003. [Reserved.]

951 Section 1004. [Reserved.]

952 Section 1005. [Limitation of Action Against Trustee.]

953 (a) Unless previously barred by adjudication, consent or limitation, any claim against a trustee  
954 for breach of trust is barred as to any beneficiary who has received a final account or other  
955 statement fully disclosing the matter and showing termination of the trust relationship between  
956 the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six  
957 months after receipt of the final account or statement. In any event and notwithstanding lack of  
958 full disclosure a trustee who has issued a final account or statement received by the beneficiary  
959 and has informed the beneficiary of the location and availability of records for examination by  
960 the beneficiary is protected after three years. A beneficiary is deemed to have received a final  
961 account or statement if, being an adult, it is received by the beneficiary personally or if, being a  
962 minor or disabled person, it is received by the beneficiary's representative as described in article  
963 3.

964 (b) Where a claim is not barred by the provisions of subsection (a), a beneficiary may not  
965 commence a proceeding against a trustee for breach of trust more than three years after the date

966 the beneficiary or a representative of the beneficiary knew or reasonably should have known of  
967 the existence of a potential claim for breach of trust.

968 (c) If subsections (a) and (b) do not apply, a judicial proceeding against a trustee for breach of  
969 trust must be commenced within five years after the first to occur of:

970 (1) the removal, resignation, or death of the trustee;

971 (2) the termination of the beneficiary's interest in the trust; or

972 (3) the termination of the trust.

973 Section 1006. [Reliance on Trust Instrument.] A trustee who acts in reasonable reliance on the  
974 terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of  
975 trust to the extent the breach resulted from the reliance.

976 Section 1007. [Event Affecting Administration or Distribution.] If the happening of an event or  
977 change of status, including, but not limited to: birth, adoption, marriage, divorce, performance of  
978 educational requirements, or death, affects the administration or distribution of a trust, a trustee  
979 who has exercised reasonable care to ascertain the happening of the event or change of status is  
980 not liable for a loss resulting from the trustee's lack of knowledge.

981 Section 1008. [Exculpation of Trustee.]

982 (a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the  
983 extent that it:

984 (1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless  
985 indifference to the purposes of the trust or the interests of the beneficiaries; or

986 (2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship  
987 to the settlor.

988 (b) An exculpatory term drafted or caused to be drafted by the trustee may be invalid as an  
989 abuse of a fiduciary or confidential relationship unless the trustee proves that its existence and  
990 contents were adequately communicated to the settlor.

991 Section 1009. [Beneficiary's Consent, Release, or Ratification.] A trustee is not liable to a  
992 beneficiary for breach of trust if the beneficiary, while having capacity, in writing, consented to  
993 the conduct constituting the breach, released the trustee from liability for the breach, or ratified  
994 the transaction constituting the breach, unless:

995 (1) the consent, release, or ratification of the beneficiary was induced by improper conduct of  
996 the trustee; or

997 (2) at the time of the consent, release, or ratification, the beneficiary did not know of the  
998 material facts relating to the breach.

999 Section 1010. [Limitation on Personal Liability of Trustee.]

1000 (a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract  
1001 properly entered into in the trustee's fiduciary capacity in the course of administering the trust if  
1002 the trustee in the contract disclosed the fiduciary capacity.

1003 (b) A trustee is personally liable for torts committed in the course of administering a trust, or for  
1004 obligations arising from ownership or control of trust property, including liability for violation of  
1005 environmental law, only if the trustee is personally at fault.

1006 (c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an  
1007 obligation arising from ownership or control of trust property, or on a tort committed in the  
1008 course of administering a trust, may be asserted in a judicial proceeding against the trustee in the  
1009 trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

1010 Section 1011. [Interest as General Partner.]

1011 (a) Except as otherwise provided in subsection (c) or unless personal liability is imposed in the  
1012 contract, a trustee who holds an interest as a general partner in a general or limited partnership is  
1013 not personally liable on a contract entered into by the partnership after the trust's acquisition of  
1014 the interest if the fiduciary capacity was disclosed in the contract or in a statement previously  
1015 filed pursuant to chapter 108A or chapter 109.

1016 (b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a general  
1017 partner is not personally liable for torts committed by the partnership or for obligations arising  
1018 from ownership or control of the interest unless the trustee is personally at fault.

1019 (c) The immunity provided by this section does not apply if an interest in the partnership is held  
1020 by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or  
1021 more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

1022 (d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is  
1023 personally liable for contracts and other obligations of the partnership as if the settlor were a  
1024 general partner.

1025 Section 1012. [Protection of Person Dealing with Trustee.]

1026 (a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith  
1027 and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly  
1028 exercising the trustee's powers is protected from liability as if the trustee properly exercised the  
1029 power.

1030 (b) A person other than a beneficiary who in good faith deals with a trustee is not required to  
1031 inquire into the extent of the trustee's powers or the propriety of their exercise.

1032 (c) A person who in good faith delivers assets to a trustee need not ensure their proper  
1033 application.

1034 (d) A person other than a beneficiary who in good faith assists a former trustee, or who in good  
1035 faith and for value deals with a former trustee, without knowledge that the trusteeship has  
1036 terminated is protected from liability as if the former trustee were still a trustee.

1037 (e) Comparable protective provisions of other laws relating to commercial transactions or  
1038 transfer of securities by fiduciaries prevail over the protection provided by this section.

1039 Section 1013. [Certification of Trust.]

1040 (a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the  
1041 trustee may furnish to the person a certification of trust containing the following information:

1042 (1) that the trust exists and the date the trust instrument was executed;

1043 (2) the identity of the settlor;

1044 (3) the identity and address of the currently acting trustee;

1045 (4) the powers of the trustee;

1046 (5) the revocability or irrevocability of the trust and the identity of any person holding a power  
1047 to revoke the trust;

1048 (6) the authority of co-trustees to sign or otherwise authenticate and whether all or less than all  
1049 are required in order to exercise powers of the trustee;

1050 (7) the trust's taxpayer identification number; and

1051 (8) the manner of taking title to trust property.

1052 (b) A certification of trust may be signed or otherwise authenticated by any trustee.

1053 (c) A certification of trust must state that the trust has not been revoked, modified, or amended  
1054 in any manner that would cause the representations contained in the certification of trust to be  
1055 incorrect.

1056 (d) A certification of trust need not contain the dispositive terms of a trust.

1057 (e) A recipient of a certification of trust may require the trustee to furnish copies of those  
1058 excerpts from the original trust instrument and later amendments which designate the trustee and  
1059 confer upon the trustee the power to act in the pending transaction.

1060 (f) A person who acts in reliance upon a certification of trust without knowledge that the  
1061 representations contained therein are incorrect is not liable to any person for so acting and may  
1062 assume without inquiry the existence of the facts contained in the certification. Knowledge of  
1063 the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust  
1064 instrument is held by the person relying upon the certification.

1065 (g) A person who in good faith enters into a transaction in reliance upon a certification of trust  
1066 may enforce the transaction against the trust property as if the representations contained in the  
1067 certification were correct.

1068 (h) A person making a demand for the trust instrument in addition to a certification of trust or  
1069 excerpts is liable for damages if the court determines that the person did not act in good faith in  
1070 demanding the trust instrument.

1071 (i) This section does not limit the right of a person to obtain a copy of the trust instrument in a  
1072 judicial proceeding concerning the trust.

1073 SECTION 6. (a) Except as otherwise provided in this act, on the effective date of this act:

1074 (1) this act shall apply to all trusts created before, on, or after the effective date;

1075 (2) this act shall apply to all judicial proceedings concerning trusts commenced on or after the  
1076 effective date;

1077 (3) this chapter shall apply to judicial proceedings concerning trusts commenced before the  
1078 effective date unless the court finds that application of a particular provision of this chapter  
1079 would substantially interfere with the effective conduct of the judicial proceedings or prejudice  
1080 the rights of the parties, in which case the particular provision of this act shall not apply and the  
1081 superseded law shall apply;

1082 (4) an act done before the effective date shall not be affected by this act.

1083 (b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that  
1084 has commenced to run under any other statute before the effective date of this act, that statute  
1085 shall continue to apply to the right even if it has been superseded.



1086 SECTION 7. This act shall take effect on January 2, 2012.